

STATE OF MICHIGAN
COURT OF APPEALS

GAIL MORGAN, Individually and as Next Friend
of SAMANTHA MORGAN SMITH, a Minor,

UNPUBLISHED
January 31, 2006

Plaintiff-Appellant,

v

KENSINGTON PLACE,

No. 256596
Oakland Circuit Court
LC No. 2002-045385-NO

Defendant/Cross-Plaintiff-Appellee,

and

DANIEL ROBERT HERBSTRIET,

Defendant/Cross-Defendant.

Before: Donofrio, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right the post-trial grant in defendant's favor of a partial directed verdict and entry of a judgment notwithstanding the verdict.¹ Plaintiff contended that defendant differentially enforced rules and regulations pertaining to their mobile home community, which interfered with her rights to quiet enjoyment of her leasehold. We reverse.

Renters of premises have a right to beneficial enjoyment of the land "for the purpose for which the premises are rented, at least to the extent disclosed to the lessor at the making of the lease." *Grinnell Bros v Asiuliewicz*, 241 Mich 186, 188; 216 NW 388 (1927). "Such enjoyment the landlord may not destroy or seriously interfere with, in use by himself or permitted use by others, of any part of the premises occupied in conjunction therewith." *Id.* Thus, the landlord breaches the covenant of quiet enjoyment by denying "the tenant in a substantial degree the beneficial use of the leasehold" or "the beneficial enjoyment of the premises." 49 Am Jur 2d, Landlord and Tenant, §§ 601, 606. This matches the instruction the trial court gave to the jury

¹ A portion of the verdict in plaintiff's favor that was not subject to the directed verdict is not part of this appeal.

requiring plaintiff to prove “1. That Defendant landlord obstructed, interfered with or took away from the tenant; 2, in a substantial degree, the tenant’s beneficial use of the leasehold.” Neither party objected to this instruction or attempted to supplement it with a definition of the word “substantial.”

After the jury rendered its verdict in plaintiff’s favor, the trial court granted judgment notwithstanding the verdict on the basis of a different standard. The trial court defined “substantial” as “something grave and permanent with the intention of depriving the tenant of the premises or render the premises useless to the tenant because he is deprived of the possession and enjoyment of it” (citing *Powell on Real Property*, Vol 2 § 16B-31 (2003)). The trial court found the evidence insufficient to meet that standard.

We review directed verdicts and judgments notwithstanding the verdict de novo, viewing the evidence in the light most favorable to the nonmoving party. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491-492; 668 NW2d 402 (2003). A directed verdict may only be granted if “reasonable jurors could honestly [not] have reached different conclusions.” *Id.*, 491. Judgment notwithstanding the verdict “should be granted only if the evidence fails to establish a claim as a matter of law.” *Id.*, 492.

Plaintiff contends that the trial court, in granting judgment notwithstanding the verdict, improperly invaded the province of the jury to determine witness credibility and factual issues. Because the trial court applied a legal standard that was incorrect and higher than the one given to the jury, we agree.

Michigan jurisprudence does not require substantial interference to be permanent, to be intended to drive a tenant out, or to *per se* deprive the tenant of possession. A landlord’s interference is “substantial” where it is so incompatible with the benefit intended by the lease that the “plaintiff may as well move out.” *Grinnell Bros, supra* at 188-189. Here, the benefit intended by the lease was a home in which to live. Judgment notwithstanding the verdict would be appropriate if the evidence, when viewed in the light most favorable to plaintiff, cannot support a finding that defendant’s actions were so incompatible with plaintiff’s use of her home that she “may as well move out.”

We find that the evidence could reasonably support that finding. The jury was presented with differing interpretations of events. However, the testimony could support a finding that plaintiff was singled out for more stringent or more extensive enforcement of defendant’s rules than other residents. Even if all citations were based on actual rule violations, a system of selective enforcement could make a tenant feel that her home was not a real home. Significantly, it is undisputed that police officers were summoned to plaintiff’s home without legal justification. When viewed in the light most favorable to plaintiff, the evidence could support a finding that defendant’s treatment of her was sufficiently incompatible with her use of her home that she “may as well move out.” When the evidence is viewed in the light most favorable to plaintiff, we do not find it insufficient as a matter of law to maintain her claim of interference with her right to quiet enjoyment.

We reverse the trial court's judgment notwithstanding the verdict, and we reinstate the jury verdict.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Alton T. Davis